



**4310-EJ**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 13**

**[NPS-WRST-15781; PPAKWRSTPO, PPMPSAS1Z.YP0000]**

**RIN 1024-AE14**

**Special Regulations, Areas of the National Park System, Wrangell-St. Elias National Park and Preserve; Off-Road Vehicles**

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service is amending its special regulations for Wrangell-St. Elias National Park and Preserve to designate trails in the portion of the Nabesna District located within the National Preserve where motor vehicles may be used off roads for recreational purposes. The rule prohibits the use of certain types of vehicles based upon size and weight, and closes certain areas in designated wilderness within the Nabesna District that are located outside of established trails and trail corridors to the use of motor vehicles for subsistence.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Rick Obernesser, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Phone (907)-822-7202. Email: [AKR\\_Regulations@nps.gov](mailto:AKR_Regulations@nps.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The approximately 13.2-million-acre Wrangell-St. Elias National Park and Preserve (Wrangell-St. Elias) was established in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. 96-487, Dec. 2 1980; 16 U.S.C. 410hh-410hh5; 3101-3233). Wrangell-St. Elias consists of approximately 8.3 million acres of land designated as a National Park and approximately 4.8 million acres of land designated as a National Preserve. Section 201(9) of ANILCA (16 U.S.C. 410hh(9)) directed that Wrangell-St. Elias be managed for the following purposes:

- To maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial systems, lakes and streams, valleys, and coastal landscapes in their natural state.
- To protect habitat for, and populations of, fish and wildlife including but not limited to caribou, brown/grizzly bears, Dall's sheep, moose, wolves, trumpeter swans and other waterfowl, and marine mammals.
- To provide continued opportunities, including reasonable access for mountain climbing, mountaineering, and other wilderness recreational activities.

That provision of ANILCA also directed that subsistence uses by local residents be permitted in the park, where such uses are traditional, in accordance with the provisions of Title VIII of ANILCA.

Section 203 of ANILCA (16 U.S.C. 410hh-2) directed the Secretary of the Interior, acting through the National Park Service (NPS), to administer Wrangell-St. Elias as a new area of the National Park System, pursuant to the provisions of the National Park Service Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*). In the Organic Act, Congress granted the NPS broad authority to regulate the use of areas under its jurisdiction provided that the associated impacts

will leave the “scenery and the natural and historic objects and the wild life [in these areas] unimpaired for the enjoyment of future generations.” Section 3 of the Organic Act authorizes the Secretary of the Interior, acting through NPS, to “make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks.”

#### *Wilderness.*

Section 701 of ANILCA designated approximately 9.6 million acres within Wrangell-St. Elias as wilderness, a portion of which is located within the Nabesna District. Section 707 of ANILCA provides that, “[e]xcept as otherwise expressly provided for in this Act...,” wilderness designated by ANILCA shall be administered in accordance with the Wilderness Act. According to the Wilderness Act (16 U.S.C. 1131-1136), these lands are to be “administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, [and] the preservation of their wilderness character ....”

#### *Access for Subsistence Uses.*

ANILCA authorizes certain methods of access for subsistence purposes that would otherwise be prohibited under Federal law or general NPS regulations. Section 811(a) of ANILCA (16 U.S.C. 3121(a)) provides that “rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.” Section 811(b) of ANILCA (16 U.S.C. 3121(b)) provides that “[n]otwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purpose by local residents, subject to reasonable regulation.”

NPS implemented Section 811 of ANILCA (16 U.S.C. 3121) in 36 CFR 13.460(a), which states “[n]otwithstanding any other provision of this chapter, the use of . . . other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent.” The 1986 General Management Plan for Wrangell-St. Elias determined off-road vehicles (ORVs) were a means of surface transportation traditionally employed by local rural residents for subsistence purposes. Title 36, Code of Federal Regulations, section 13.460(b)-(c) authorizes the Superintendent to restrict or close routes or areas to a certain use after notice and a public hearing “if the Superintendent determines that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park was established.”

#### *Off-Road Vehicles.*

The subsistence use of motor vehicles off roads in Wrangell-St. Elias is governed by Section 811(b) of ANILCA (16 U.S.C. 3121(b)) and 36 CFR 13.460. Separate legal authorities govern other uses of motor vehicles off roads in Wrangell-St. Elias. Under 43 CFR 36.11(g)(1), non-subsistence use of off-road vehicles is generally prohibited, except on routes designated by NPS in accordance with Executive Order 11644, or pursuant to a valid permit issued under 43 CFR 36.11(g)(2), 43 CFR 36.10, or 43 CFR 36.12.

Executive Order 11644, “Use of Off-Road Vehicles on the Public Lands,” issued in 1972 and amended in 1977 by Executive Order 11989, required federal agencies to issue regulations designating specific areas and routes on public lands where the use of ORVs may be permitted. NPS implemented these Executive Orders in 36 CFR 4.10, which prohibits the use of motor

vehicles off established roads unless routes and areas are designated for off-road motor vehicle use by special regulation. Under 36 CFR 4.10(b), such routes and areas “may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.”

Under 36 CFR 4.10(b), the designation of ORV routes must comply with Executive Order 11644, as amended, which requires that they be located:

- To minimize damage to soil, watershed, vegetation, or other resources of the public lands.
- To minimize harassment of wildlife or significant disruption of wildlife habitat.
- To minimize conflicts between ORV use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.
- In areas of the National Park System only if the respective agency head determines that ORV use in such locations will not adversely affect their natural, aesthetic, or scenic values.

Executive Order 11644 also requires that NPS ensure adequate opportunity for public participation when designating areas and trails for ORV use.

#### *History of ORV Use in the Nabesna District of Wrangell-St. Elias.*

ORV use in the Nabesna District commenced after World War II when surplus military vehicles were used by hunters, miners, and others for personal use and access to remote areas. In the late 1970s, the all-terrain vehicle (typically three- or four-wheelers) emerged as a new and more affordable mode of cross-country travel in rural Alaska. When Wrangell-St. Elias was created in 1980, there was an established trail network in the Nabesna District. These trails were used by recreational and subsistence users, as well as a means to access private inholdings. The

1986 General Management Plan for Wrangell-St. Elias determined that ORVs are a traditional means of accessing subsistence resources by local residents.

In 1983, Wrangell-St. Elias began issuing permits for recreational ORV use on nine established trails under 43 CFR 36.11(g)(2). This regulation provides superintendents authority to issue permits allowing ORV use on existing trails in areas that are not designated wilderness upon a finding that the ORV use “would be compatible with the purposes and values for which the area was established.” The permits require users to stay on existing trails and adhere to certain conditions. The number of permits issued for recreational ORV use rose from 64 in 1985 to 263 in 2010.

Since 1986, Wrangell-St. Elias has conducted two major studies of ORV impacts, and a detailed survey and inventory of physical conditions along the existing trails in the Nabesna District. These studies demonstrated that ORV use over wet areas leads to trail braiding and widening. Vegetation does not recover quickly, soils erode, permafrost depth changes, and impacts to surface hydrology occur. Of the nine trails in the Nabesna District, the Tanada Lake, Copper Lake, Reeves Field, and Suslota trails have substantial sections with degraded conditions.

On June 29, 2006, the National Parks Conservation Association, Alaska Center for the Environment, and the Wilderness Society filed a lawsuit against NPS in the United States District Court for the District of Alaska. The plaintiffs challenged the method used by NPS to issue recreational ORV permits for the nine trails within the Nabesna District. They asserted that when issuing recreational ORV permits, NPS failed to make the compatibility finding required by 43 CFR 36.11(g)(2) and failed to prepare an environmental analysis of recreational ORV use

as required by the National Environmental Policy Act of 1969 (NEPA). The plaintiffs did not challenge the use of ORVs for subsistence uses.

In a settlement agreement announced on May 15, 2007, NPS agreed to suspend issuing recreational ORV permits for three specific trails unless the ground is frozen. NPS also agreed to prepare an environmental impact statement under NEPA and issue a record of decision.

*Environmental Impact Statement and Selected Action.*

On December 21, 2007, NPS published a Notice of Intent to prepare an environmental impact statement in the Federal Register. The initial planning process included extensive public involvement, public meetings, agency consultation, and tribal consultation. The Nabesna Off-Road Vehicle Management Plan/Draft Environmental Impact Statement (DEIS) was released to the public on August 11, 2010. During the 90-day public comment period, which included public meetings and briefings, NPS received 153 comment letters. NPS responses to public comments were included in the Final Environmental Impact Statement Nabesna Off-Road Vehicle Management Plan (FEIS) published in August 2011. The FEIS describes major impacts to soils, wetlands, and vegetation associated with ORV use on unimproved trails. It also describes moderate to major impacts to wilderness character associated with subsistence ORV use in designated wilderness.

On December 14, 2011, the Regional Director signed a Record of Decision (ROD) which identified Alternative 6 in the FEIS as the selected action. The selected action provides continued opportunities for appropriate and reasonable access to backcountry recreation. The selected action also accommodates subsistence use and access to inholdings, and protects scenic views, fish and wildlife habitat, and other resources and values of Wrangell-St. Elias.

Under the selected action, NPS will improve the most degraded segments of ORV trails in the Nabesna District through trail re-routing or reconstruction to a design-sustainable or maintainable condition (as those terms are defined in the FEIS). A design-sustainable or maintainable condition ensures that ORV users can stay on one trail alignment and that damage to soils, watersheds, vegetation, and other resources are minimized. The FEIS estimates that for the six trails in the National Preserve, trail improvements will result in the recovery of 204.6 acres of wetland habitat and 212.7 acres of vegetation habitat. The FEIS also projects that each of the improved trails in the National Preserve will have between 50 and 180 ORV round trips per year (depending upon the trail and including both recreational and subsistence use), most of these occurring during hunting season.

In accordance with 36 CFR 4.10(b), the rule authorizes recreational ORV use on improved or frozen trails in the portion of the Nabesna District located within the National Preserve, but not in the National Park. In the area of designated wilderness included in the FEIS (FEIS Wilderness Area), subsistence ORV users generally must stay on designated trails; however, off-trail ORV use is authorized in designated trail corridors (i.e., 0.5 miles on either side of the trail) for the sole purpose of game retrieval. All other areas of the FEIS Wilderness Area are closed to subsistence ORV use. The FEIS Wilderness Area is approximately 541,000 acres of designated wilderness, bordered by Drop Creek on the west, the Nabesna Glacier on the east, and Mt. Sanford and Mt. Jarvis on the south. Trails and trail corridors in the FEIS Wilderness Area, and the boundaries of the FEIS Wilderness Area, are identified on the Upper Copper/Jacksina Wilderness map available at the Slana Ranger Station, the Main Park Visitor Center, the Tanada and Copper Lake trailheads, and on the park's website at <http://www.nps.gov/wrst>. In the portion of the Nabesna District located outside of the FEIS



Wilderness Area, subsistence ORV use is allowed on or off ORV trails before and after trail improvements. NPS will monitor the use and take management actions as described in the FEIS. The rule precludes the use of certain types of vehicles based upon vehicle size and weight.

The DEIS, FEIS, ROD, and other supporting documents can be found online at <http://www.parkplanning.nps.gov/wrst>, by clicking on the link entitled “Nabesna ORV Management Plan EIS” and then clicking on the link entitled “Document List.”

### **Final Rule.**

#### *Summary of Final Rule.*

The rule amends the special regulations for Wrangell-St. Elias at 36 CFR part 13, subpart V, to implement the selected action in the ROD. Pursuant to 36 CFR 4.10(b), the rule designates six trails in the National Preserve for recreational ORV use. Recreational ORV users are required to obtain a permit to use the designated trails. Permits will be issued only for frozen trails or trails in a design-sustainable or maintainable condition, as determined by the Superintendent. The rule requires that subsistence ORV users stay on trails or within trail corridors in the FEIS Wilderness Area. The rule also establishes vehicle weight and size limits to protect park resources. Through implementation of the selected action in the ROD, Wrangell-St. Elias will continue to protect and preserve natural and cultural resources and natural processes, and provide a variety of safe visitor experiences while minimizing conflicts among users.

#### *Recreational ORV Use.*

The following trails in the National Preserve are designated for recreational ORV use: Suslota, Caribou Creek, Trail Creek, Lost Creek, Soda Lake, and Reeve Field. Recreational ORV users are required to obtain a permit to use the designated trails. Prior to trail improvements, permits will be issued only for trails in fair or better condition (Lost Creek, Soda Lake, and Trail

Creek), except that permits may be issued for any of the six designated trails in the National Preserve when the Superintendent determines they are frozen. Frozen is defined as frost depth of 6 inches as measured with a soil probe. NPS will announce the completion of trail improvements and when trails are frozen through a press release and notices posted at the Slana Ranger Station, the Main Park Visitor Center, and on the park's website at <http://www.nps.gov/wrst/planyourvisit/orv-trails.htm>. After trail improvements, permits will be issued for the additional trails in the National Preserve (Suslota, Caribou Creek, and Reeve Field) regardless of whether the trails are frozen. Recreational ORV use permits will include the following conditions to protect park resources:

- Travel is only authorized on designated trails listed on the permit.
- ORVs must stay on the designated trails.
- If hunting, gathering, or otherwise walking off the trail, park ORVs off to the side of the trail; vehicles may not be used to retrieve game off of the designated trail alignment.
- Creating new trails is prohibited.
- ORV use is prohibited in designated wilderness areas.

The rule prohibits recreational ORV use in the portion of the Nabesna District located within the National Park. Maps of the trails designated for recreational ORV use will be available at the Slana Ranger Station and the Main Park Visitor Center, and on the park's website at <http://www.nps.gov/wrst>.

#### *Subsistence ORV Use.*

For trails in the FEIS Wilderness Area (Black Mountain Trails and the southern portions of the Tanada Lake Trail), the rule requires that subsistence ORV users stay on trails or, when for the purpose of game retrieval only, within identified trail corridors. The trail corridors consist

of 0.5 miles on either side of the trail. Travel outside of these designated trail corridors in the FEIS Wilderness Area is prohibited. Trails and trail corridors in the FEIS Wilderness Area, and the boundaries of the FEIS Wilderness Area, are identified on the Upper Copper/Jacksina Wilderness map available at the Slana Ranger Station and the Main Park Visitor Center, and on the park's planning website at <http://www.nps.gov/wrst>. They are also identified at the Tanada and Copper Lake trailheads.

*Authorized Off-Road Vehicles.*

The rule also establishes the types of ORVs that may be operated for recreational as well as subsistence uses. The following types of vehicles, because of their size, width, weight, or high surface pressure (measured, for example, in pounds per square inch) are prohibited for recreational or subsistence uses:

- Nodwells or other tracked rigs greater than 5.5 feet in width or 4,000 pounds curb weight.
- Street-legal highway vehicles.
- Custom 4x4 jeeps, SUVs, or trucks designed for off-road use.
- Original or modified “deuce and a half” cargo trucks.
- Dozers, skid-steer loaders, excavators, or other construction equipment.
- Motorcycles or dirt bikes.
- Log skidders.

The rule requires that all wheeled vehicles (including all-terrain vehicles, utility vehicles, and Argos) be less than 1,500 pounds curb weight, not including trailers. Nothing in this rule supersedes the applicable provisions of 36 CFR part 4 and 36 CFR 13.460(d), which require that

ORVs be operated in compliance with applicable state and federal laws, and prohibit damaging park resources or harassing wildlife.

### **Frequently Asked Questions.**

This section explains some of the principal elements of the rule in a question and answer format.

*What is an “Off-Road Vehicle” (ORV)?*

Any motor vehicle, including all-terrain vehicles, designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmachines or snowmobiles. This definition does not include snowmachines and the rule does not affect the use of snowmachines in Wrangell-St. Elias.

*What is recreational ORV use?*

Any ORV use by individuals not engaged in subsistence uses as defined in 36 CFR 13.420 or accessing an inholding. Recreational ORV use in the portion of the Nabesna District located within the National Preserve includes, but is not limited to, access for sport hunting, fishing, and dispersed camping.

*Do I need a permit to operate an ORV for recreational purposes?*

Yes, if you are using the ORV for recreational use as defined above. Permits for recreational ORV use may be obtained at the Main Park Visitor Center in Copper Center or the Slana Ranger Station in Slana.

*Do I need a permit to operate an ORV for subsistence purposes?*

No, not if you are a local rural resident as defined by 36 CFR 13.420 and are actively engaged in subsistence uses.

*Is there a limit to the number of ORV permits available?*

No, there is no limit to the number of permits that the Superintendent may issue for recreational ORV use.

*Several of my family members have ORVs that we would like to use for recreational purposes on trails in the National Preserve. Do we need a permit for each vehicle?*

Yes, you need to obtain a permit for each vehicle that you want to use for recreational purposes on designated ORV trails. The operator of the ORV must have the permit in his or her possession when the ORV is in use.

*How long will permits be valid for ORV use?*

When you apply for a permit, you must indicate how long you intend to operate an ORV for recreational use. The NPS will determine the duration of the permit based upon the requested time period and other factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, or other management considerations necessary to ensure that ORV use is being managed in a manner compatible with the purposes for which the park was established. The duration of each permit will be stated in the terms and conditions of the permit.

*Where can I operate my ORV?*

For recreational ORV users, designated trails will be listed on the face of the permit and identified on maps available at the Slana Ranger Station and the Main Park Visitor Center, and on the park's website at <http://www.nps.gov/wrst>. Travel is only permitted on the trails listed on the permit, which will include all of the trails designated for ORV use by this rule that are either frozen or improved.

*Will designated trails for recreational ORV users be marked on the ground?*

Yes, trails designated for recreational ORV use will be shown on a map on a kiosk at the trailhead and will be marked on the ground with carsonite posts.

*Can I tow a trailer with my ORV on designated trails?*

Yes, NPS recommends the use of low-pressure “balloon” style tires on ORV trailers.

*Are there any vehicle requirements for my ORV?*

Yes, all ORVs are required to comply with the weight and size limits specified in the rule. The rule also prohibits the use of certain types of vehicles.

*I am a local rural resident engaged in subsistence uses. What effect does the rule have on me?*

Your ORV must comply with the weight and size limits described in the rule, and certain types of vehicles listed in the rule are prohibited. On the trails in the FEIS Wilderness Area (Black Mountain Trails and the southern portions of the Tanada Lake Trail), subsistence ORV users generally must stay on trails; however, off-trail ORV use in the FEIS Wilderness area is authorized in designated trail corridors (i.e., 0.5 miles on either side of the trail) for the sole purpose of game retrieval. All other areas of the FEIS Wilderness Area are closed to subsistence ORV use.

*How will designated trails and trail corridors for subsistence ORV users in the FEIS Wilderness Area be identified?*

The designated trails and trail corridors are identified on the Upper Copper/Jacksina Wilderness map available at the Slana Ranger Station and the Main Park Visitor Center, and on the park’s website at <http://www.nps.gov/wrst>. They are also identified at the Tanada and Copper Lake trailheads.

## **Summary of and Responses to Public Comments**

The NPS published the proposed rule at 79 FR 2608 (January 15, 2014). The NPS accepted comments through the mail, hand delivery, and through the Federal eRulemaking Portal at <http://www.regulations.gov>. Comments were accepted through March 17, 2014, and the NPS received nine comments. A summary of comments and NPS responses is provided below. Several comments supported the proposed rule and did not request any change. After considering the public comments and after additional review, the NPS did not make any substantive changes in the final rule. The definition of “ORV” in the proposed rule was removed because “off-road vehicle” is already defined in 36 CFR 13.1. Other minor changes were made for clarity.

*1. Comment:* One comment stated that the NPS should not allow any recreational ORV use in the National Preserve because it would detrimentally affect the National Park and cause severe degradation of the National Preserve and its biodiversity.

*NPS Response:* Section 1313 of ANILCA (16 U.S.C. 3201) allows for sport hunting and fishing in national preserves in Alaska. As noted in the FEIS, there is a network of trails in the Nabesna District that predates the establishment of Wrangell-St. Elias. These trails were used by ORVs to access areas for sport and subsistence hunting, mining, and access to private property. Part of the purpose of the Nabesna Off-Road Vehicle Management Plan, as stated in the FEIS, is to provide “access to sport hunting in the National Preserve” that is compatible with park purposes and values. The FEIS concluded that permitting recreational ORV use on improved trails in the National Preserve was a reasonable and appropriate means of access. The FEIS also concluded that permitting recreational ORV use on frozen or improved trails in the portion of the Nabesna District located within the National Preserve would not result in significant impacts on the environment or severe degradation of natural resources, including wildlife, in either the National Park or the National Preserve.

2. *Comment:* One comment stated that the NPS should not allow any recreational ORV use in the National Preserve because it would not result in any economic benefit or increased tourism.

*NPS Response:* The NPS completed a cost-benefit analysis of the selected action in a report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations for Management of Off Road Vehicles in The Nabesna District of Wrangell-St. Elias National Park and Preserve” which can be viewed online at <http://parkplanning.nps.gov/wrst>, by clicking the link entitled “Nabesna ORV Management Plan EIS” and then clicking the link entitled “Document List.” This report concluded that the selected action will have beneficial effects on trail condition, visitor opportunities, and socioeconomics. It also concluded that the selected action will improve economic efficiency.

3. *Comment:* The Alaska Quiet Rights Coalition stated that the NPS should not allow any recreational ORV use in the National Preserve because it would eliminate a quiet alternative to less protected public lands.

*NPS Response:* The FEIS concluded that permitting recreational ORV use on improved trails in the National Preserve would have “minor, long-term, adverse direct and indirect impacts to soundscapes” because of the low anticipated level of ORV use and because of the small affected area relative to other areas available for non-motorized activities. Because of the minor impacts and relatively small area, the NPS determined that recreational ORV use on certain trails in the National Preserve is an appropriate way for individuals to experience and enjoy Wrangell-St. Elias National Preserve.

4. *Comment:* Some commenters stated that it will be difficult for the NPS to regulate and enforce the rules related to ORV use.



*NPS Response:* The NPS believes that it will be able to enforce the rules related to ORV use for the following reasons:

- Recreational ORV users are required to obtain a permit. Most users will get their permit at the Slana Ranger Station where they will receive information about local trail conditions and restrictions. Recreational ORV users are required to have their permit with them when the ORV is in use.
- Trailheads are well-signed with kiosks that will indicate whether or not the trail is open to recreational ORV use. Trails will be marked on the ground with carsonite posts. Maps showing trails and trail corridors for subsistence ORV users in designated wilderness will be posted at the Copper Lake and Tanada Lake trailheads.
- There is a full-time ranger stationed in Slana. Patrol of the trails is a priority during hunting season.
- This rule applies only to the Nabesna District, not the entire 13.2 million acres of Wrangell St. Elias.

5. *Comment:* One commenter stated that ORVs should not be allowed outside of trails and trail corridors when frozen because this could damage soil and vegetation.

*NPS Response:* Recreational ORV users are required to stay on trails. Within the FEIS Wilderness area, subsistence ORV users are limited to trails and, for the purpose of game retrieval only, off-trail in trail corridors. Outside the FEIS Wilderness Area, subsistence ORV users are not limited to trails or trail corridors; however, the NPS expects that ORV use under frozen conditions will be light to non-existent because ORV use is driven by hunting seasons which typically end on or before September 20<sup>th</sup>.

6. *Comment:* The State of Alaska ANILCA Implementation Program and Citizen's Advisory Committee on Federal Areas (CACFA) suggested 43 CFR 36.11(g) as a mechanism to authorize recreational ORV use on improved trails in the National Park since these trails are "existing."

*NPS Response:* Because the proposed re-routes of the most degraded segments of ORV trails would take substantial resources to build, deviate significantly from the current alignment, and result in a different set of environmental impacts, the NPS does not believe these re-routed trails are "existing" within the meaning of 43 CFR 36.11(g).

7. *Comment:* The State of Alaska ANILCA Implementation Program and CACFA stated that recreational ORV use should be allowed on improved or frozen trails in the National Park to provide affordable access to hunting and fishing opportunities.

*NPS Response:* The NPS does not believe it is appropriate to allow recreational ORV use in the National Park for the following reasons:

- The primary use of recreational ORVs is to access areas for sport hunting. Section 1313 of ANILCA (16 U.S.C. 3201) allows for sport hunting in national preserves in Alaska, but this activity is not permitted in the National Park.
- This decision meets the objectives for the project as stated in the FEIS and represents a balanced approach based upon public comments received on the DEIS. This is further described in the section entitled "Basis for the Decision" in the ROD that can be found online at <http://www.parkplanning.nps.gov/wrst>, by clicking on the link entitled "Nabesna ORV Management Plan EIS" and then clicking on the link entitled "Document List."

- Air taxis provide an alternative means of accessing remote sport hunting in the National Preserve.
- Improved trails in the National Park (e.g. Tanada Lake Trail) will provide enhanced non-motorized access for recreational activities.

8. *Comment:* CACFA stated that recreational ORV use should be allowed on improved or frozen trails in the National Park because ANILCA guarantees that these types of traditional uses would be allowed to continue.

*NPS Response:* ANILCA does not address recreational ORV use in NPS areas. Section 811 (16 U.S.C. 3121) speaks to subsistence access for local rural residents. While section 1110(a) (16 U.S.C. 3170(a)) speaks to the use of *non-motorized* surface transportation (as well as snowmachines, motorboats, and airplanes) for traditional activities and for travel to and from villages and homesites, it does not address ORVs.

9. *Comment:* The State of Alaska ANILCA Implementation Program stated that recreational ORV use should be allowed on improved or frozen trails in the National Park because the same monitoring protocols and management tools being applied to subsistence ORV use in the National Park and National Preserve and non-subsistence ORV use in the National Preserve would also detect and mitigate impacts from recreational ORV use in the National Park.

*NPS Response:* It is true that the monitoring identified in the ROD will help the NPS mitigate direct impacts to soils, vegetation, and wetlands from all ORV use. However, the NPS is not monitoring impacts to visitor opportunities, hunting competition (subsistence), or soundscape that would occur if recreational ORV use were permitted in the National Park.

*10. Comment:* One commenter stated that all wilderness areas should be open to subsistence ORV use and that subsistence ORV use should not be confined to trails and trail corridors.

*NPS Response:* The FEIS concludes that the closures in the FEIS Wilderness Area are needed to prevent major impacts to the undeveloped character of the designated wilderness. The closures are consistent with the 1986 WRST GMP and Section 811(b) of ANILCA (16 U.S.C. 3121(b)), which states that the Secretary shall permit subsistence use of ORVs traditionally employed by local residents, subject to reasonable regulation.

### **Compliance with Other Laws, Executive Orders, and Department Policy.**

#### **Use of Off-Road Vehicles on the Public Lands (Executive Orders 11644 and 11989).**

Executive Order 11644, as amended by Executive Order 11989, was adopted to address impacts on public lands from ORV use. The Executive Order applies to ORV use on federal public lands that is not authorized under a valid lease, permit, contract, or license. Section 3(a)(4) of Executive Order 11644 provides that ORV “[a]reas and trails shall be located in areas of the National Park System, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.” Since the Executive Order clearly was not intended to prohibit all ORV use everywhere in these units, the term “adversely affect” does not have the same meaning as the somewhat similar terms “adverse impact” and “adverse effect” used in the National Environmental Policy Act of 1969 (NEPA). In analyses under NEPA, a procedural statute that provides for the study of environmental impacts, the term “adverse effect” includes minor or negligible effects.

Section 3(a)(4) of the Executive Order, by contrast, concerns substantive management decisions and must be read in the context of the authorities applicable to such decisions. Wrangell-St. Elias is an area of the National Park System. Therefore, NPS interprets the Executive Order term “adversely affect” consistent with its NPS Management Policies 2006. Those policies require that the NPS only allow “appropriate use” of parks and avoid “unacceptable impacts.”

This rule is consistent with those requirements. It will not impede attainment of Wrangell-St. Elias’s desired future conditions for natural and cultural resources as identified in the FEIS. NPS has determined that this rule will not unreasonably interfere with the atmosphere of peace and tranquility or the natural soundscape maintained in natural locations within Wrangell-St. Elias. Therefore, within the context of the resources and values of Wrangell-St. Elias, motor vehicle use on the routes and areas designated by this rule (which are also subject to resource closures and other management measures that will be implemented under the selected action in the ROD) will not cause an unacceptable impact to the natural, aesthetic, or scenic values of Wrangell-St. Elias.

Section 8(a) of the Executive Order requires agency heads to monitor the effects of ORV use on lands under their jurisdictions. On the basis of information gathered, agency heads may from time to time amend or rescind designations of areas or other actions as necessary to further the policy of the Executive Order. The selected action in the ROD includes monitoring and resource protection procedures and periodic review to provide for the ongoing evaluation of impacts of motor vehicle use on protected resources. The Superintendent has authority to take appropriate action as needed to protect park resources.

**Regulatory Planning and Review (Executive Orders 12866 and 13563).**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

**Regulatory Flexibility Act (RFA).**

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations for Management of Off Road Vehicles in The Nabesna District of Wrangell-St. Elias National Park and Preserve” which can be viewed online at <http://parkplanning.nps.gov/wrst>, by clicking the link entitled “Nabesna ORV Management Plan EIS” and then clicking the link entitled “Document List.”

**Small Business Regulatory Enforcement Fairness Act (SBREFA).**

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

**Unfunded Mandates Reform Act (UMRA).**

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (Executive Order 12630).**

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

**Federalism (Executive Order 13132).**

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The rule is limited in effect to federal lands managed by the NPS and does not have a substantial direct effect on state and local government in Alaska. A Federalism summary impact statement is not required.

**Civil Justice Reform (Executive Order 12988).**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**Consultation with Indian Tribes (Executive Order 13175 and Department policy) and ANCSA Corporations.**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation and Alaska Native Claims Settlement Act (ANCSA) Native Corporation policies. While the NPS has determined the rule would not have a substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources, the NPS has consulted Alaska Native tribes and Alaska Native Corporations regarding implementation of this rule. Consultation occurred through bi-annual government to government meetings with Cheesh'na tribal council and Mentasta traditional village council. In addition, a letter was sent to each tribal entity within the park's resident zone communities and to Ahtna Native Corporation, Inc. when the proposed rule was published in the Federal Register.

**Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).**

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the information collection requirements associated with NPS Special Park Use Permits and has assigned OMB Control Number 1024-0026 (expires 08/31/16). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.



## **National Environmental Policy Act of 1969 (NEPA).**

This rule constitutes a major Federal action significantly affecting the quality of the human environment. We have prepared the FEIS under the NEPA. The FEIS is summarized above and available online at <http://www.parkplanning.nps.gov/wrst>, by clicking on the link entitled “Nabesna ORV Management Plan EIS” and then clicking on the link entitled “Document List.”

## **Effects on the Energy Supply (Executive Order 13211).**

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

## **Drafting Information.**

The primary authors of this rule are Bruce Rogers, Norah Martinez, and Peter Christian, Wrangell-St. Elias National Park and Preserve; Paul Hunter and Andee Sears, NPS Alaska Regional Office, and Jay P. Calhoun, Regulations Program Specialist, National Park Service, Regulations and Special Park Uses.

## **List of Subjects in 36 CFR Part 13**

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 13 as set forth below:

## **PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA**

1. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Subpart N also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197; Pub. L. 105—277, 112 Stat. 2681-259, October 21, 1998; Pub. L.

106-31, 113 Stat. 72, May 21, 1999; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104-333, 110 Stat. 4240.

**Subpart V—Special Regulations—Wrangell-St. Elias National Park and Preserve**

2. Add §13.1914 to subpart V to read as follows:

**§ 13.1914 Off-road motor vehicle use in the Nabesna District.**

(a) *What is the scope of this regulation?* The regulations contained in paragraphs (b) through (e) of this section apply to the use of motor vehicles off roads within the boundaries of the Nabesna District within Wrangell-St. Elias National Park and Preserve. This section does not affect the use of snowmobiles or snowmachines.

(b) *What terms do I need to know?* The following definitions apply only to the regulations in this section:

*FEIS Wilderness Area* means an area of designated wilderness identified on the Upper Copper/Jacksina Wilderness map available at the Slana Ranger Station, the Main Park Visitor Center, the Tanada and Copper Lake trailheads, and on the park website.

*Frozen* means frost depth of 6 inches as measured with a soil probe and determined by the Superintendent.

*Improved* means a trail that is in a design-sustainable or maintainable condition as determined by the Superintendent.

*Nabesna District* means a designated area in the northern portion of Wrangell-St. Elias National Park and Preserve as shown on a map available at the Slana Ranger Station, the Main Park Visitor Center, and on the park website.

*Recreational use* means the use of an off-road vehicle for any purpose other than for subsistence uses, which are defined in §13.420, or access to inholdings in accordance with 43 CFR 36.10.

*Trail corridor* means an area extending 0.5 miles from either side of the centerline on the Black Mountain trails and portions of the Tanada Lake trail within the FEIS Wilderness Area.

(c) *Must I obtain a permit to operate an off-road vehicle for recreational use?* (1) You must obtain a permit before operating an off-road vehicle for recreational use. Permits may be obtained at the Slana Ranger Station in Slana or the Main Park Visitor Center in Copper Center.

(2) The Superintendent may issue permits for the recreational use of off-road vehicles on any of the following trails in the National Preserve:

- (i) Suslota Trail.
- (ii) Caribou Creek Trail.
- (iii) Trail Creek Trail.
- (iv) Lost Creek Trail.
- (v) Soda Lake Trail.
- (vi) Reeve Field Trail.

(3) Permits may be issued for the recreational use of off-road vehicles only on designated trails that are either frozen or improved. A map showing trails designated for recreational off-road vehicle use, and a current list of frozen and improved trails, are available at Slana Ranger Station, the Main Visitor Center, and on the park's website.

(4) You must obtain a permit for each off-road vehicle that you want to use for recreational purposes on designated off-road vehicle trails. The operator of the off-road vehicle must have the permit in his or her possession when the off-road vehicle is in use.

(5) Violating any term or condition of a permit is prohibited.

(6) The recreational use of off-road vehicles without a permit is prohibited.

(d) *May I operate an off-road vehicle for subsistence uses in the FEIS Wilderness Area?*

(1) In the FEIS Wilderness Area, local rural residents may operate off-road vehicles for subsistence uses as defined by this part on the following trails:

(i) Black Mountain Trails.

(ii) Tanada Lake Trail.

(2) In the FEIS Wilderness Area, off-road vehicles may be operated off the designated trails only for the purpose of game retrieval in the designated trail corridors.

(3) All other areas of the FEIS Wilderness Area are closed to subsistence ORV use and local rural residents may not operate an off-road vehicle for subsistence uses outside of the trails and trail corridors identified in paragraphs (d)(1)-(2) of this section.

(4) Trails and trail corridors in the FEIS Wilderness Area, and the boundaries of the FEIS Wilderness Area, are shown on the Upper Copper/Jacksina Wilderness map available at the Slana Ranger Station, the Main Park Visitor Center, the Tanada and Copper Lake trailheads, and on the park website.

(e) *Are there limits on the types of off-road vehicles that may be operated off roads in the Nabesna District of Wrangell-St. Elias National Park and Preserve?* The following types of vehicles may not be used off roads for recreational or subsistence uses in the Nabesna District of Wrangell-St. Elias National Park and Preserve:

(1) Nodwells or other tracked rigs greater than 5.5 feet in width or 4,000 pounds curb weight.

(2) Street-legal highway vehicles.

- (3) Custom 4x4 jeeps, SUVs, or trucks designed for off-road use.
- (4) Original or modified “deuce and a half” cargo trucks.
- (5) Dozers, skid-steer loaders, excavators, or other construction equipment.
- (6) Motorcycles or dirt bikes.
- (7) Log skidders.
- (8) Wheeled vehicles (including all terrain vehicles, utility vehicles, and Argos)

exceeding 1,500 pounds curb weight, not including trailers.

Dated: July 30, 2014.

---

Rachel Jacobson  
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 2014-19740 Filed 08/19/2014 at 8:45 am; Publication Date: 08/20/2014]